March 3, 2009

To: Teresa Parsons
Director's Review Program Supervisor

FROM Meredith Huff, SPHR
Director's Review Investigator

SUBJECT: Henry Korndorfer v. Department of Transportation (DOT)
Allocation Review No. ALLO-08-006

Director's Review Conference
Mr. Henry Korndorfer, Mr. Aziz Makari, and Mr. Al Firouzi requested Director's Reviews of their positions' allocation by individually submitting a Request for Director's Review. On January 22, 2009, I conducted a Director's review conference at the Personnel Resources Board's office at 2828 Capitol Blvd. in Olympia WA. Present at the review conference were Mr. Korndorfer, Mr. Makari and, Mr. Firouzi, DOT employees; Mr. Vince Oliveri, IFPTE Local 17, representing the employees; and Ms. Niki Pavlicek, Classification and Compensation Manager, representing DOT. Although at the conference it was agreed among the employees that Mr. Firouzi would be the group speaker, I encouraged all participants to provide information and comments. The information provided applied to all of the positions.

Director's Determination
The Director's review of DOT's allocation determination of Mr. Korndorfer's position is complete. The review was based on written documentation, classifications and information gathered during the January 22, 2009 review conference. As the Director's investigator, I have carefully reviewed all of the file documentation, classifications and the information provided during the review conference. I conclude that on a best fit of the overall duties and responsibilities, Mr. Korndorfer's position is properly allocated to the class of Transportation Engineer 2.

Background
Mr. Al Firouzi, Mr. Henry Korndorfer, and Mr. Aziz Makari all work in the Northwest Region, Region Programs and Services Division, Utilities Office of DOT. All the employees report to Mr. Ahmad Wehbe, immediate supervisor. Mr. Dean Holman and Mr. Don Wills are second and third level supervisors, respectively. Mr. Firouzi stated that one additional employee, Ms. Lynne Waldher, also works in the office with them. The working title for these employees is Utility Accommodation Engineer (UAE). (Exhibit B-3)

On June 7, 2007 the DOT NW Region Human Resources office received a Classification Questionnaire (CQ) for Mr. Korndorfer's position, #10052. The supervisor section of the CQ was signed by Mr. Ahmad Wehbe and Mr. Don Wills. Mr. Korndorfer believes his position should be reallocated to the Transportation Engineer 3 classification. (Exhibit B-2)

By letter dated January 9, 2008, Ms. Pavlicek notified Mr. Korndorfer that his position was properly allocated as a Transportation Engineer 2 and denied his request for reallocation to the Transportation Engineer 3. (Exhibit B-1) On January 22, 2008, Mr. Korndorfer requested a Director's review of DOT's determination by submitting a Director's Review Form. (Exhibit A-1) During the review conference, it was agreed by Mr. Oliveri and Ms. Pavlicek that the review period for Mr. Korndorfer's position is twelve months prior to June 7, 2007 as provided in the collective bargaining agreement.

Summary of Comments from Mr. Firouzi, Mr. Korndorfer and Mr. Makari
During the Director's review conference, Mr. Firouzi explained that he and his colleagues function as specialists for the Utility Accommodation program in the Northwest Region office of DOT. Mr. Firouzi characterized utility accommodation as providing easements to highway right of ways. He clarified that the utility company cannot use or make changes within a right of way without an approved permit or franchise. To obtain the permit or franchise, the utility must submit an application. Mr. Firouzi stated he and Mr. Korndorfer and Mr. Makari individually review, evaluate and recommend approval of utility franchise and permit applications.

Mr. Firouzi clarified the UAEs do not specialize in a specific utility or company; the supervisor assigns the applications to each of them to maintain an even work load. Mr. Firouzi identified utilities as including water, sewer, fiber optics, electric, phone and gas. Mr. Korndorfer noted that because he has worked with utilities in that area for a long time, a company or local agency that he previously worked with may directly call him for assistance. When that application comes in, the supervisor usually will assign it to him. Mr. Korndorfer verified the same is true of Mr. Firouzi and Mr. Makari.

Mr. Firouzi stated that the main purposes of their jobs are to accommodate utility providers with information and guidance and to process utility permit and franchise requests. Mr. Firouzi emphasized that their geographical area extends from Southern King County to Whatcom County and the Canadian border. Within this area, the UAEs are in charge of accommodation and utility application documents for permits and franchises and must ensure they are accurate and complete. The UAEs review all engineering measurements and dimensions on the application. Mr. Makari pointed out that it is often necessary to deal with more than one utility; for example, electric, water and sewer may be involved in one project and each utility must submit applications for permits or franchises. He stated it is possible to issue both permits and franchises for the same utility project. Mr. Firouzi commented that by law, the UAEs cannot tell utilities where to establish their utilities; they are required to tell where not to put the utilities. It was noted that the RCWs provide specific regulations and explain what is involved for the utility customer.

Mr. Korndorfer stated when there are franchise/permit problems, they will have a meeting with the utility to discuss information about the guidelines. He indicated that the meeting attendees will include his supervisor, the utility customer and the other Utility Accommodation Engineers and sometimes specialty engineers. They discuss the project and try to resolve any issues. Mr. Korndorfer also indicated that in some cases, a meeting will be held with the utilities to discuss their plan, prior to the utility submitting an application for a franchise or permit. At the meeting, any potential problems can be discussed so the permitting process goes smoothly. Mr. Firouzi added that it is important to have the right people at meetings, so when his supervisor asks who should attend the meeting for DOT, he tries to bring in all the specialists and other people who need to be involved. He provided an example of a utility that planned to go across a wetland so it was important to let that customer know they had to get a permit from the state Department of Ecology.

Mr. Firouzi indicated there is a DOT procedural manual that is followed for issuing permits and franchises. Mr. Makari discussed the possibility of the UAEs providing exceptions to some of the requirements. He noted the regulation for underground pipes to be five feet below the highway surface. If there is a problem that prevents a pipe being at the required depth, he can recommend a variance to the standard, such as a pipe at a lesser depth, perhaps four feet.

Mr. Firouzi indicated that at the end of the permitting process, the completed permit/franchise is checked and signed by Mr. Wills. If there are any variances, such as allowing a pipe to be buried three feet rather than the required five feet, the UAE will explain the reasoning behind it. Once the permit is signed, the UAE will then complete and sign the cover letter and forward everything to the utility. Mr. Korndorfer pointed out that signatures on the completed permits are not limited to the SnoKing office. He indicated that whenever federal government funding and highways are involved, such as I5, approval signatures are required from DOT Headquarters. Mr. Firouzi remarked that when the utility receives the completed papers, frequently it will call and ask “What next?” The UAEs provide information about the process and who to contact next.

Mr. Makari commented that when the utility project work requires a longer completion time than allowed by the permit, the permitting process starts over with a new application. As changes may have occurred, such as traffic control, maintenance, or right of way use, the new permit may be different than the original permit. He noted that in an emergency, such as the downtown Seattle water main breaking, they rapidly finish the permits so the emergency is quickly resolved.

Mr. Makari remarked that a bond is collected during the permitting process to ensure that if there is a problem such as the road needs replacing after the utility work is done, the money is available to take care of that problem. Once the Maintenance Engineer signs off on a release that everything at the utility project is okay, the UAE will release the bond by writing and sending a letter to the bank holding the bond.

Mr. Firouzi remarked that with the supervisor’s approval, each UAE will go out in the field once or twice in six months to inspect a Category 1 (high impact) project. He noted this is important to make sure the work is being done as expected and to detect any problems. They usually do not go to the field to inspect Category 2 and 3 (low impact) projects.

Mr. Firouzi, Mr. Makari and Mr. Korndorfer maintained that they are accomplishing the same work as the UAEs in the Urban Corridors Office (UCO). They pointed out that the difference is that in the UCO, the employees are allocated to the Transportation Engineer 3 level. Mr. Firouzi stated that he had trained some of the UCO people to do utility accommodation. He emphasized that in recognition of the UAEs experience in utility accommodation, advance engineering knowledge, understanding and assistance to utility clients and other DOT units, all of their positions should be reallocated to the TE3 class.

Mr. Oliveri, on behalf of the employees, indicated that once the permit or franchise is approved and issued, any deviation to the process requires the company or citizens to contact DOT by communicating with one of these three people. The staff person then determines mitigation options and coordinates with specialty engineers to evaluate the necessary changes as a result of the deviation; an addendum to the original permit may be issued.

Mr. Oliveri discussed the Northwest Region UCO. He observed the TE3 employees are doing the same utility accommodation and utility permits/franchises work as Mr. Firouzi, Mr. Korndorfer and Mr. Makari are assigned. He stated that Mr. Firouzi trained the employees in the UCO to do accommodation permits and franchises. Mr. Oliveri drew attention to several letters submitted on behalf to the employees from supervisors. (Exhibits C, D and E)

Mr. Oliveri expressed concerns that in the TE2 class, *Preliminary Engineering* is the subheading of the discussion regarding utilities accommodation, applications and permitting. He emphasized that the TE2 class did not address the independence, engineering knowledge and actual work of these employees. He argued the TE2 class specifies employees work under general supervision, which is totally different from the work and independence of Mr. Firouzi, Mr. Korndorfer and Mr. Makari.

Mr. Oliveri stressed that the complexity of the Definition and Distinguishing Characteristics of the TE3 class is more appropriately matched to the positions under review. He emphasized that the Distinguishing Characteristics of the TE3 class specifications speak directly to these positions as "serve as a staff specialist of limited scope." He pointed out that the employees independently do the work, have a thorough understanding of DOT policies, and use advance engineering knowledge. Further, Mr. Oliveri maintained that the DOT Performance Evaluation criteria for the TE3, adopted July 1, 2007, are used to evaluate these positions. (Exhibit B-8)

Summary of DOT's Comments

Ms. Pavlicek stated, during the review conference, that in terms of the work for these positions, the incumbents all do the exact same thing. The agency believes that the independence of each position is limited to the area of focus - utility accommodation and permitting. She emphasized that the incumbents do not use advanced engineering techniques to complete their work.

Ms. Pavlicek reminded everyone that comparison to other units at DOT, specifically the Urban Corridors Office, is not an allocation factor. In addition, she emphasized that comparisons to specific positions in the UCO are not allocating factors. She stated that she did not consider the

UCO positions in completing her review of Mr. Firouzi's, Mr. Korndorfer's and Mr. Makari's positions.

Ms. Pavlicek stated that the work specified on the classification questionnaire falls within the Transportation Engineer 2 classification. Therefore, these positions remain classified at the TE2 as the best fit for their overall duties and responsibilities.

Rationale for Director's Determination
The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work accomplished, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. See Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

When determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. See Dudley v. Dept of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

In Salsberry v. Washington State Parks and Recreation Commission, PRB Case No. R-ALLO-06-013 (2007), the Personnel Resources Board addressed the concept of *best fit*. The Board referenced Allegri v. Washington State University, PAB Case No. ALLO-96-0026 (1998), in which the Personnel Appeals Board noted that while the appellant's duties and responsibilities did not encompass the full breadth of the duties and responsibilities described by the classification to which his position was allocated, on a best fit basis, the classification best described the level, scope and diversity of the overall duties and responsibilities of his position.

When there is a definition that specifically includes a particular assignment and there is a general classification that has a definition which could also apply to the position, the position will be allocated to the class with the definition that includes the position Mikitik v Depts. of Wildlife and Personnel, PAB No. A88-021 (1989).

A comparison of one position to another similar position may be useful in gaining a better understanding of the duties performed, the level of responsibility assigned to an incumbent and the organization of the agency. However, allocation of a position must be based on the overall duties and responsibilities assigned to an individual position compared to the existing classifications. The allocation or misallocation of a similar position is not a determining factor in the appropriate allocation of a position. Flahaut v. Departments of Personnel and Labor & Industries, PAB No. ALLO 96-0009 (1996).

Glossary of Classification Terms
In reviewing this position, I have considered the following terms. The Department of Personnel's (DOP) Glossary of Classification Terms defines these terms. The Glossary is found at http://www.dop.wa.gov/HRProfessionals/Classification/.

Complexity of work – Refers to the scope, variety and difficulty of the duties, responsibilities and skills required in order to perform the work. Complexity may be categorized as follows [in part]:

> 3. Complex – Requires the use of a wide variety of rules, processes, materials, or equipment that require an application of specialized knowledge or skills. Decisions must be made independently regarding which rules, processes, materials or equipment to use in order to effectively accomplish work assignments.
> 4.Highly/Most Complex – Consists of broad responsibilities including extensive research and analysis of systems, facts, figures, or similar information to determine the nature and scope of problems which need to be solved. Work involves originating new policies, procedures, and/or techniques to deal with these problems.

Supervision required – The extent of control exercised by the supervisor with respect to the way assignments are made; the latitude that the position incumbent has in performing and/or determining work methods and priorities; the scope of decision-making authority that the position incumbent has to use discretion in determining a course of action in new or unusual situations; and the degree of review of completed assignments. There are four basic types of supervision [in part]:

> 2. General supervision – Recurring assignments are carried out within established guidelines without specific instruction. Deviation from normal policies, procedures, and work methods requires supervisory approval, and supervisory guidance is provided in new or unusual situations. The employee's work is periodically reviewed to verify compliance with policies and procedures.
> 3. General direction – Work assignments are carried out in accordance with established policies and objectives. Position incumbents plan and organize the work, determine the work methods to be employed, and assist in determining priorities and deadlines. Completed work is reviewed in terms of effectiveness in producing expected results.

Classification Questionnaire for Mr. Firouzi, Mr. Makari and Mr. Korndorfer
Each employee describes his responsibilities and work time percentage as follows, in part:
30% Utility Accommodation: Serves as a specialist in accommodating utility installations, buried and aerial, within the State right of way; point of contact for Local Agencies and WSDOT personnel who require assistance in highway utility installation matters. . . .applies WSDOT policies, standards and procedure as well as engineering principles, methods and practices for any given installation to be permitted, including identifying permits which may be required by WSDOT HQ and outside agencies. Facilitates meetings and field reviews as needed. Possesses familiarity with Utility related WACs and RCWs.

40% Utility Permit/Franchise Application Processing: Working independently processing Category 1, 2, and 3 utility permits, utility franchises and utility franchise amendments, survey permits, customizes standard forms as needed and contacts applicants directly for additional

information as needed. Permit and franchise processing includes: Determining application category fee and setting up JA account; evaluate the applicant's documentation components which include, design specifications, drawing plans, profile and details/sections,. . . Determine the need for a variance; Determine engineering accuracy of submitted documentation . . . Initiate and facilitate meetings to resolve complex utility placement issues . . . Identify Specialty Engineers for the review of applications, Request approval recommendation. Formulate recommendations for the supervisor or manager, as required.

20% Design Review Support, Guidance & Training: Review proposed coordinated design submittals from Developer Services, utility providers, and municipalities for major projects investigating possible existing permits/franchises and the requirement for future permits/franchises for the new design. . . .

5% Maintain records/Documentation: Enter engineering data in the Utility Permit/Franchise Statewide database to document the approved permit/franchise . . .

5% Utility Office Support: Train and/or assist co-workers on various computer programs or processes as needed arises. . . . Assist management by providing innovative strategy for complex issues as they arise.

Mr. Wehbe, immediate supervisor, signed each CQ confirming his agreement with the statements and indicating that he provides *"little supervision – employee responsible for devising own work methods."* Mr. Wills also signed the CQ. (Exhibit B-2)

Transportation Engineer 3 (TE3) (class code 66160)
The following is copied, in part, from the Transportation Engineer 3 classification: *"**Definition**: Performs advance transportation engineering work under limited supervision.*

***Distinguishing Characteristics**: At this level, incumbents are generally placed in charge of a major project or functional area which is characterized by supervising several support staff (staff may include or consist of contracted consultants) or serve as a staff specialist in a complex area of limited scope (this may include serving as a staff specialist consultant to Local Agencies). Incumbents are expected to possess a thorough working knowledge of agency policies, standards and procedures as well as engineering principles, methods and practices. Assignments require judgments in selecting and adapting techniques to solve transportation problems. Incumbents may represent the Department at public meetings, open houses, to local agencies, contractors, consultants, etc., for specific projects. While work is occasionally spot-checked and reviewed upon completion, incumbents are responsible for planning and carrying out projects with only minimal supervision. Staff at this level are often called on to assign, train and evaluate engineers and technicians . . . . "*

The statements of work in the TE3 Distinguishing Characteristics provide guidance to the breadth of impact and the scope of responsibility that is encompassed in the Definition statement of *"Performs advance transportation engineering work under limited supervision."* Such Distinguishing Characteristics statements include, in part:

"Survey . . . Leader of a design/PS&E preparation team or traffic design/PS&E preparation team . . .the team leader also does the most complex design work such as writing new specifications, traffic switches, etc.

Traffic: Traffic Signals: Performs capacity analysis to determine optimum signal timing and phasing. Directs and creates base plans. .. writes special provisions for innovative traffic signals deviating from standard techniques . . .

Surveillance Control and Driver Information: Creative design of specialized systems including complex elements such as mainline conduit and communications . . .

Materials: Geotechnical designer of complex projects such as one- or two-span bridges of extensive length over varying ground conditions, multi-span bridges, . . . " (Emphasis added)

Mr. Korndorfer's work responsibilities for utility accommodation include assisting DOT personnel, local agencies and utility companies with highway utility accommodation, permits and franchises. His work responsibilities for utility permit/franchise application processing include determining the applicable fee from an established fee schedule; independently evaluating the applicant's submitted documentation, including design specifications and drawing plans; determining compliance with state laws and regulations; and with his supervisor, attending meetings with utilities to resolve issues such as leases, easements, and right of way issues.

Mr. Korndorfer confirmed his supervisor assigns the work, attends meetings with utilities and local agencies with him, and approves Mr. Korndorfer's requests to do field inspections of projects. Mr. Korndorfer discusses any recommended variances with his supervisor prior to utility permit approval. His third-level supervisor reviews and signs the completed permits and franchises. Mr. Korndorfer's description of the level of supervision received is consistent with the DOP Glossary of Terms definition of *general supervision*.

The scope of Mr. Korndorfer's work as described on the CQ and during the review conference does not achieve the level of "*Performs advance transportation engineering work under limited supervision"* that is anticipated by the Definition of the TE3 class. The level of supervision received and the majority of Mr. Korndorfer's assigned work does not reach the level of creativity, the specialization or the breadth of independent responsibility expressed in the Distinguishing Characteristics. Further, Mr. Korndorfer is not responsible for making judgments in selecting and adapting engineering techniques to solve transportation problems to the extent encompassed by the Distinguishing Characteristics. Transportation Engineer 3 is not the best fit for Mr. Korndorfer's position's overall scope of impact, duties and responsibilities.

Transportation Engineer 2 (TE2)(66140)
The following is copied, in part, from the Transportation Engineer 2 classification.
"Definition: Performs transportation engineering work under general supervision.

Distinguishing Characteristics: Work at this level is characterized by the independent application of standard engineering procedures and techniques to accomplish a wide variety of work in the office, laboratory, and/or field. Incumbents generally serve as full production staff or crew

leaders. Work is assigned through general instructions and the setting of deadlines by a supervisor who engages in ongoing spot-check review, provides assistance when problems are encountered and reviews completed work. This role may include the leadership of technical support staff and entry level engineers such that incumbents are called upon to direct and train staff."

Incumbents typically perform the level of work described below a majority of the time. This description is not intended to be all-inclusive but representative of the level of responsibility and level of difficulty of the work performed by this class. . .

Preliminary Engineering
….Researches and reviews applications submitted by utilities for placement of their facilities in state right of way; writes utility permits and franchises plus prepares supporting documentation, legal descriptions, special provisions and exhibits; writes and processes utility, turnback, local agency, developer and private party agreements using standard format; prepares related correspondence and exhibits which define the division of responsibility; assists in administering agreements, maintains agreement ledgers and status reports; assesses impact of proposed land development projects upon state transportation system; recommends mitigation measures; coordinates design details of privately constructed highway improvements."

The criteria for allocating a position are ordered by Class Series Concept, if any, class Definition, and class Distinguishing Characteristics. The former Personnel Appeals Board found that when a classification Definition specifically addresses a position, that position should be allocated to that class. (See Mikitik v Depts. of Wildlife and Personnel, PAB No. A88-021 [1989]) This concept is appropriately applied also when the Distinguishing Characteristics speak directly to a specific set of responsibilities or duties of a position. The Distinguishing Characteristics of the TE2 speak directly to responsibilities for utility facilities being placed in state right of ways and writing utility permits and franchises. These are the responsibilities that jointly require 70% of Mr. Korndorfer's work time. My conclusion is that the TE2 paragraph regarding utility placement, permitting and franchising in state right of way closely matches Mr. Korndorfer's work and responsibilities.

Mr. Korndorfer performs transportation engineering work under general supervision while reviewing and recommending utility accommodation, and utility permit/franchise approval in his position as Utility Accommodation Engineer. He reviews all supporting designs and drawings for the permit/franchise. He prepares legal descriptions, special provisions and exhibits for the permit/franchise document. This level of supervision, independent application of standard engineering techniques, and assigned duties and responsibilities are encompassed in the Definition and Distinguishing Characteristics of the Transportation Engineer 2 class.
The Transportation Engineer 2 provides the best fit for Mr. Korndorfer's overall duties and responsibilities. His position is appropriately allocated to the Transportation Engineer 2 class.

Appeal Rights
RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following, in part:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to . . . the Washington personnel resources board . . . Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

cc: Vincent Oliveri, IFPTE, Local 17
Henry Korndorfer, DOT
Niki Pavlicek, DOT
Lisa Skriletz, DOP

Enclosure: List of Exhibits

List of Exhibit

A. Filed by Henry Korndorfer January 28, 2008:

Director's Review Request Form
Agency's Allocation Determination letter dated January 9, 2008

B. Filed by Niki Pavlicek of DOT on April 29, 2008:

Agency Exhibits

1. HR Allocation Determination letter
2. Classification Questionnaire signed and dated June 6, 2007
3. Organizational chart
4. Classification Specs Transportation Engineer 2 (66140)
5. Classification Specs Transportation Engineer 3 (66160)
6. December 5, 2008 Director's Review Decision for Lynne Waldher v. DOT, ALLO-08-010

Employee Exhibits

7. **Exhibit A**- Transportation Engineer 3 job (performance) competencies.
8. **Exhibit B-** CQ of a Utility Accommodation Transportation Engineer 3.

C. January 7, 2009 memo of support from Bob Briggs
D. January 13, 2009 memo of support from Don Wills
E. January 15, 2009 memo of support from Dean Holman